

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
333 Queen Street
Honolulu, Hawaii 96813

December 1, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, HI

REQUEST FOR APPROVAL TO INITIATE RULE-MAKING PROCEEDINGS REGARDING
AMENDMENTS TO TITLE 13, SUBTITLE 11, OCEAN RECREATION AND COASTAL
AREAS, PARTS I, II, and III, HAWAII ADMINISTRATIVE RULES.

SUMMARY

1. Sections 13-230-21, 13-231-5, 13-231-26, 13-231-28, 13-231-29, 13-233-29, 13-256-18, 13-256-33, 13-256-36, 13-256-39, 13-256-71, 13-256-72, 13-256-73, and 13-256-77 are amended (see Exhibit A). New sections 13-256-72.1, 13-256-73.1, 13-256-73.2, 13-256-73.3, 13-256-73.4, 13-256-73.5, 13-256-73.6, 13-256-73.7, 13-256-73.8, 13-256-73.9, 13-256-73.10, 13-256-73.11, and 13-256-73.12 are added (see Exhibit A).

STATUTE: Chapter 200, Hawaii Revised Statutes

PURPOSE: Amend Hawaii Administrative Rules (HAR) to allow the Division of Boating and Ocean Recreation (DOBOR) to better manage and facilitate boating and ocean recreation related activities within the State small boat harbors and near-shore waters.

REMARKS:

On September 9, 2010, the Board of Land and Natural Resources (Board) approved the Division of Boating and Ocean Recreation's (DOBOR) request to initiate rule making regarding amendments to Title 13, Subtitle 11, Hawaii Administrative Rules (HAR), Item J-2. The Board made several recommendations as well and they are as follows:

- Ask for input from Boaters regarding the dormant vessel definition;
- Work with the Hanalei Bay community regarding their concerns;
- Hold two public hearings regarding the proposed rule amendments on the island of Hawaii, in Kona and Hilo, instead of just one meeting in Waimea;
- Dedicate a Board meeting to the review of the proposed amendments following the public hearings.

During the meeting, there were numerous comments received regarding specific rule amendments. After further consideration, DOBOR felt that it would be prudent to proceed with the proposed rule amendments that had been worked on for numerous years and basically

received little or no comment in opposition. The remaining portion of the proposed rule amendment package would either be brought back to the Board if any further rule revisions were warranted or would be taken directly to public hearing. The rule amendment package that has been re-submitted for Board approval because of substantive changes consists of the Hanalei Bay rules, Kaneohe Bay rules, American Civil liberties Union (ACLU) request, and the rule pertaining to a grace period should a regular mooring permit expire prior to renewal.

In 2003, the Ninth Circuit Court of Appeals ruled that the HAR pertaining to commercial vessels operating in Hanalei Bay violated federal law. Since then, DOBOR has been working with the community on amendments to the HAR with input from the Attorney General's (AG) office. The proposed amendments were presented at the September 9, 2010 Board meeting; however, several members of the Hanalei community testified that they did not have time to study the revisions made by the AG's office prior to the Board meeting and felt that additional community input was needed before proceeding with public hearings. During the meeting, Board member Ron Agor volunteered to meet with the community representatives, DOBOR staff, the AG, and the County of Kauai. Subsequent to the meeting, further amendments have been made and we now feel that we have reached majority consensus with all parties involved. The revisions primarily focused on the wording and further clarified where commercial activities may take place. The revisions also require a permittee to obtain County of Kauai permission regarding embarking and disembarking passengers on the beach. A new Exhibit C has been created and dated December 1, 2010 to reflect the amendments. Also, the HAR amendment date reflected in the Hanalei Bay HAR has been changed to 2011 because the HAR will not be finalized by the end of 2010.

The development of the Kaneohe Bay HAR was done in order to comply with a legislative mandate found in Hawaii Revised Statutes, Chapter 200D. The proposed new HAR implement the 'Master Plan' that was facilitated by the Kaneohe Bay Regional Council (KBRC) according to Act 208, Session Laws of Hawaii 1990. The KBRC has reviewed and approved the HAR as well as the AG's office. No new amendments have been made to the proposed HAR and implementation of the new HAR will fulfill the legislative mandate.

The ACLU had contacted DOBOR regarding the HAR that pertained to who may reside on a vessel as well as who may be authorized to receive certain use permits within a small boat harbor. The ACLU felt that DOBOR was being discriminatory because the HAR only permitted the spouse of a vessel owner to reside on a vessel, receive parking permits, etc. The ACLU requested that a personal partner of the vessel owner also be allowed to reside on the vessel as well as be permitted to receive other applicable use permits. DOBOR consulted with the AG's office and agreed that this was an acceptable request. DOBOR has already amended the HAR that pertains to who may reside on a vessel to include a personal partner and is now proposing to amend the HAR that pertains to who may receive a parking permit within the small boat harbors.

Item J-2, on the June 10, 2010 Board agenda, pertained to the denial of a request for a contested case hearing by attorney Richard Gronna on behalf of Bernard Morry. Mr. Morry had failed to renew his mooring permit prior to the expiration date. His account was closed and the mooring permit was offered to the next qualified applicant on the wait list according to HAR. The Board asked that we work with the Attorney General's office to determine whether there was a way to amend the HAR to give someone like Mr. Morry an opportunity to have their

mooring permit reinstated after the expiration. After consultation with the Attorney General's office, Section 13-231-5 was amended to provide a person the option of petitioning the Board to explain what unusual circumstance prevented them from renewing their mooring permit prior to the expiration. The Board can then determine whether to allow the mooring permit to be reinstated based on the circumstances. There is also a penalty provision should the Board decide to reinstate the mooring permit. Since the September 9, 2009 Board meeting, DOBOR has received additional comments and suggestions regarding this rule and further revisions have been made. DOBOR is now proposing to provide for an automatic grace period following expiration of a mooring permit. This amendment would allow a permittee to renew their mooring permit during the grace period prior to their account being closed. DOBOR has received several suggestions as to how long the grace period should be, ranging from 10 to 30-days. DOBOR requests that the Board discuss and settle on a fair grace period based on the suggested 10 to 30-day window. There has also been substantial discussion regarding the petition process in the original amendment following the September 9, 2010 Board meeting. As the HAR was written, there were no guidelines for the Board to follow when considering whether or not to reinstate an expired mooring permit and this could leave the Board vulnerable to claims of arbitrary application of the HAR. Because of these concerns, the petition process has been removed from the original proposed amendment. DOBOR would like to note that it is currently working to automate and place its entire revenue system online. This system, once implemented, will be set to automatically notify permittees 90 days, 60 days, and 30 days prior to the expiration of their mooring permits via the electronic billing service. Permittees can then arrange for a vessel inspection, show proof of insurance and submit applications for renewal via the Internet on any day, at any time. DOBOR feels that this is sufficient notice to complete all the necessary steps for permit renewals. However, if this remains a concern to the Board, a compromise approach would be to maximize the grace period to 30-days in lieu of a petition process.

RECOMMENDATIONS:

That the Board:

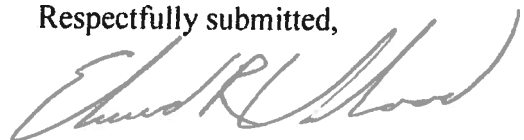
1. Grant DOBOR approval to initiate rule-making proceedings regarding amendments to Title 13, Subtitle 11, Ocean Recreation and Coastal Areas, Parts I, II, and III, Hawai'i Administrative Rules as shown in Exhibit A.
2. Authorize the Chairperson to appoint hearing masters to conduct public hearings to receive written and verbal testimony concerning the proposed amendments.

APPROVED FOR SUBMITTAL



Laura H. Thielen
Chairperson and Member

Respectfully submitted,



Edward R. Underwood
Administrator

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND RECREATION

Amendments to Title 13, Subtitle 11 Ocean Recreation
and Coastal Areas, Parts I, II, and III
Hawaii Administrative Rules

SUMMARY

1. Sections 13-230-21, 13-231-5, 13-231-26, 13-231-28, 13-231-29, 13-233-29, 13-256-18, 13-256-33, 13-256-36, 13-256-39, 13-256-71, 13-256-72, 13-256-73, 13-256-77 are amended.
2. New sections 13-256-72.1, 13-256-73.1, 13-256-73.2, 13-256-73.3, 13-256-73.4, 13-256-73.5, 13-256-73.6, 13-256-73.7, 13-256-73.8, 13-256-73.9, 13-256-73.10, 13-256-73.11, 13-256-73.12 are added.

Exhibit A

1. Section 13-230-21, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Personal partner" is an individual considered to be a "personal partner" of the principal habitation permittee who is not a relative by biology or adoption to the principal habitation permittee. While living together on the vessel, the principal habitation permittee and personal partner shall not have a landlord-tenant relationship. [Eff 2/24/94; am
] (Auth: HRS §§200-2, 200-4,
200-10) (Imp: HRS §§200-2, 200-4, 200-10)

2. Section 13-231-5, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-5 Period of validity and renewal of use permit. (a) The department may issue or renew a use permit for any period up to, but not exceeding one year. Upon expiration of the period stated therein, the permit and all rights of the permittee thereunder shall automatically terminate. No use permit shall be renewed unless all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance, have been met and the rules governing small boat harbors of the department of land and natural resources have been fully complied with.

(b) If a permittee fails to renew a regular mooring permit on or before the date on which it expires, that person may be granted a calendar day period to reinstate the regular mooring permit as long as all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance, have been met and the rules governing small boat harbors of the department of land and natural resources have been fully complied with. The person shall pay a one-time penalty fee of \$250.00 as well as all other applicable fees. Impoundment of the vessel shall be stayed only until the grace period

has expired." [Eff 2/24/94; am]
(Auth: HRS §200-10) (Imp: HRS §200-10)

3. Section 13-231-26, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-26 Use of a vessel as a place of principal habitation. (a) A vessel owner who holds a valid regular mooring permit issued by the department authorizing the owner to moor the owner's vessel in Ala Wai or Keehi [boat] small boat harbors may use that vessel as a place of principal habitation if the owner has applied for and secured:

(1) A principal habitation permit [;and] issued by the department in accordance with these rules, provided that the owner and the vessel meets the requirements set forth in these rules.

[(2) A harbor resident permit issued by the department in accordance with these rules, provided that the owner and the vessel meet the requirements set forth in these rules.]

(b) A permit authorizing the use of a vessel as a place of principal habitation shall not be issued if the vessel is owned by a corporation.

(c) No person shall be issued a permit authorizing the use of any vessel as a place of principal habitation while the vessel is moored at the following locations in Ala Wai [boat] small boat harbor:

- (1) Berths 23 through 79;
- (2) The area leased to the Waikiki Yacht Club;
- (3) The area leased as a marine fueling facility; and
- (4) [The area leased to Ala Wai Marine, Ltd.] A haul-out facility[; and].
- [(5) The moorings adjacent to the breakwater.]

(d) A vessel owner may utilize the owner's vessel as a place of principal habitation while moored in the area leased to the Hawaii Yacht Club if the owner has applied for and holds a valid principal habitation

permit [and harbor resident permit] issued by the department in accordance with these rules.

(e) Only the vessel owner, co-owner, the spouse or, in the alternative, one personal partner of each, and their legal dependents may be issued a [harbor resident] principal habitation permit. A "personal partner" is an individual considered to be a "significant other" of the principal habitation permittee who is not a relative by biology or adoption of the principal habitation permittee. While living together on the vessel, the principal habitation permittee and personal partner shall not have a landlord-tenant relationship. The department shall retain the right to limit the total number of people allowed to live on a particular vessel based on reasonable health, safety, security, or environmental concerns for persons on the vessel, other permittees at the harbor, public use of the harbor, or the harbor itself, and may deny the issuance of a [harbor resident] principal habitation permit if such issuance would exceed the limit determined by the department to be appropriate.

(f) The owners of no more than one hundred twenty-nine vessels moored at Ala Wai small boat harbor shall be issued permits to use their vessels as a place of principal habitation. The owners of no more than thirty-five vessels moored at Keehi small boat harbor [shall] may be issued such permits. Any vessel used as a place of principal habitation that is temporarily absent from its mooring[s] shall continue to be considered as one of the vessels being used as a place of principal habitation if the owner retains a principal habitation permit as provided in section 13-231-11." [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

4. Section 13-231-28, Hawaii Administrative Rules, is amended to read as follows:

§13-231-28 Staying aboard vessels moored at Ala Wai or Keehi [boat harbor] small boat harbor. (a) Staying aboard a vessel moored at Ala Wai or Keehi

[boat harbor]small boat harbor is prohibited except that:

- (1) Owners holding a valid regular mooring permit, the spouse or personal partner of each, their legal dependents, and their nonpaying guests, when in the company of the owner, may stay aboard the vessel without a use permit upon written notification to the department [on or] before the date of stay; provided that the period does not exceed any three nights in a week and a total of any [ninety] one hundred twenty nights in a calendar year, including [vessel use]vessels used as a vacation site;
- (2) Staying aboard a vessel in excess of any three nights in a week may be permitted when done in accordance with a valid:
 - (A) Stay aboard permit issued pursuant to section 13-231-22 (staying aboard transient or visiting vessels);
 - (B) Stay aboard permit issued pursuant to section 13-231-29 (vessel used as a vacation site);
 - (C) Stay aboard permit issued to a vessel owner holding a valid principal habitation [and harbor resident] permit authorizing a nonpaying bona fide guest to stay aboard the vessel in the company of the owner for a period not to exceed any thirty days in a calendar year. [; or
 - (D) Harbor resident permit issued in accordance with section 13-231-26 (use of vessel as a place of principal habitation).]

(b) When staying aboard in accordance with subsection (a)(1), and the stay is extended past the third day, the entire period of stay will be counted against time used as a vacation site in accordance with section 13-231-29.

(c) Each harbor resident or other person authorized by the department to stay aboard a vessel in a small boat harbor in accordance with this chapter, except for those under the age of six, may secure one shower facility key. Prior to receiving the shower key, the person shall deposit with the State the amount specified in section 13-234-32. No person shall be permitted to replace a shower facility

key more than two times." [Eff 2/24/94; am
] (Auth: HRS §§200-2, 200-10)
(Imp: HRS §§200-2, 200-9)

5. Section 13-231-29, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-29 Vessel used as a vacation site. (a) Staying aboard a vessel moored in Ala Wai or Keahi small boat harbor during a vacation is authorized but limited to owners holding valid regular mooring permits authorizing them to moor their vessels in the small boat harbor, the spouse or personal partner of each, their legal dependents, and nonpaying guests when accompanied by the owner, provided that:

- (1) The aggregate period of the stay is not more than thirty days in a calendar year;
- (2) The vessel owner secures a vacation permit and a stay-aboard permit for each individual vacationer;
- (3) The vessel and its occupants comply with the sanitation, vessel equipment, and all other requirements set forth under this chapter; and
- (4) The vessel owner provides evidence that the owner maintains a bona fide shoreside residence.

(b) No vacation permit shall be issued for a vessel registered or documented as being owned by a corporation." [Eff 2/24/94; am
(Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

6. Section 13-233-29, Hawaii Administrative Rules, is amended to read as follows:

"§13-233-29 Eligibility for parking permits; fee per vehicle. (a) Persons eligible for the parking permits described in section 13-233-28 and the fees for the permits are as follows:

<u>Eligible persons</u>	<u>Fees Per Vehicle</u>
(1) An owner holding a valid	\$25 per

- | | | |
|-----|---|--|
| | Use permit (permittee)
authorizing the mooring
of the owner's vessel
at the small boat harbor,
and any co-owner of the
vessel. | month |
| (2) | The [master,] spouse
<u>or personal partner</u> of each
owner, and their legal
dependents 18 years of age
or older. | \$25 per
month |
| (3) | An owner or co-owner
holding a valid use permit
authorizing the mooring of
the owner's vessel at the
small boat harbor may secure
a temporary parking permit,
for use by bona fide guests
accompanying the owner on board
the vessel on a voyage outside
the confines of the small boat
harbor. | \$10 for
each 24-
hour
period or
fraction
thereof |
| (4) | An owner or employee of
a firm, business, or
organization operating under
a lease or other agreement
authorizing the owner,
employee, firm, business,
or organization to engage in
a business or commercial
activity at the small boat
harbor. | \$90 per
month |
| (5) | <u>Other non-boating related</u>
<u>person(s) parking in any paid</u>
<u>parking stalls.</u> | <u>not less</u>
<u>than \$100</u>
<u>per month</u> |

(b) Fees for permits issued after the first month of a calendar quarter shall be prorated on a monthly basis.

(c) [Except as provided in subsection (a)(2), not] Not more than one parking permit shall be issued to a person eligible for a parking permit." [Eff 2/24/94; am and comp APR 05, 2008; am

] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

7. Section 13-256-18, Hawaii Administrative Rules, is amended by amending subsection (b) to read as follows:

"(b) Commercial thrill craft are limited to operating within a two hundred foot radius of the permitted designated location except as otherwise designated. The number of thrill craft permitted to operate within each commercial thrill craft operating area shall be as directed by the department, not to exceed a limit of six rental units and two safety units per area. Water sledding operations may be conducted in the designated thrill craft areas only if no other thrill craft activity is ongoing in said area." [Eff 2/24/94; am July 5, 2003; am

] (Auth: HRS §§200-2, 200-4, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-4, 200-22, 200-24, 200-37)

8. Section 13-256-33, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-33 Priority and procedures in the issuance of commercial use permits. [(a) Notwithstanding the commercial use permit limitations in section 13-256-36 of fifteen commercial use permits at Hanalei River mouth and two commercial use permits for Anini Beach launching ramp, all commercial vessels operating with valid commercial use permits issued by the department on September 30, 1988, and who have complied with all the rules of the department and all other federal, state or county requirements may be issued a new commercial use permit for Hanalei or Anini Beach restricted Area.]

[(b)] (a) All commercial use permits shall be valid for not more than one year[. These permits]and

shall automatically terminate on the expiration date.
[and there shall be no presumption or implication of a
right to renew.]

[(c)] (b) An application for a commercial use permit shall be made in writing to the department on the form provided by the department. The applicant shall indicate in the application the type and characteristics of the vessel, including but not limited to the vessel's overall length, draft, beam, principal source of propulsion, and any secondary or auxiliary source of propulsion, the passenger carrying capacity, and any other pertinent information. No application shall be complete until the applicant pays the application fee prescribed in these rules. The department shall accept the completed application form for consideration by endorsing it and entering the time and date on the application form submitted. The time and date the application is endorsed by the department shall be the effective filing date and shall establish the applicant's priority date; provided, however, priority for applicants who held a commercial use permit for Hanalei bay or river in November 2000 shall be based upon the date the department issued such permit. An applicant must file a new application form each year but the effective filing date shall remain the same.

[(d)] (c) Only when the number of commercial use permits issued under subsection (a) falls below the number authorized in section 13-256-[36] 38 or section 13-256-39, will the department offer a permit to the applicant with the next [earliest] highest priority date; provided that in no event shall the limit set in section 13-256-[36] 38 or section 13-256-39 be exceeded thereby." [Eff 2/24/94; am

] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

9. Section 13-256-36, Hawaii Administrative Rules, is repealed:

[\$13-256-36 Use of commercial vessels at the Hanalei River, Hanalei Bay ocean waters, and Anini Beach launching ramp. In addition to any federal, state or county law, rule, or ordinance, the following

restrictions shall apply at the Hanalei River, Hanalei Bay ocean waters, and Anini Beach launching ramp.

- (1) No commercial vessel shall operate at or use the Hanalei River, Hanalei Bay ocean waters, or Anini Beach launching ramp for any commercial purposes without a commercial use permit.
- (2) No commercial use permits shall be issued for commercial vessels to operate at or on the Hanalei river or Hanalei Bay ocean waters, except that up to two commercial use permits may be issued for kayaks to operate on the Hanalei River or Hanalei Bay ocean waters. No more than twenty-four passengers shall be allowed per day under each permit. A kayak tour group shall not exceed six vessels for passengers, and shall additionally include at least one guide vessel per six passengers.
- (3) No more than two commercial use permits shall be issued for the Anini Beach launching ramp.
- (4) No more than three commercial kayak tour operators shall be registered and permitted to operate in the Na Pali Coast restricted area. No trip scheduled by a commercial kayak tour operator may include more than four kayaks for customers and two kayaks for guides. No commercial kayak tour operation shall conduct more than two trips per day.
- (5) Commercial vessels shall land at times designated by the department.
- (6) No commercial vessel shall carry more than thirty paying or non-paying passengers per day.
- (7) No commercial vessel shall be issued a commercial use permit to operate within the North Shore Kauai Ocean Recreation Management Area if its passenger carrying capacity exceeds twenty-five individuals.
- (8) The department may authorize a holder of an

existing commercial use permit to substitute a larger vessel for a smaller vessel so long as the new vessel does not exceed the twenty-five person carrying capacity limit, nor the thirty passengers per day limitation. [Eff 2/24/94; am 11/30/00;am] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

10. Section 13-256-39, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-39 Hanalei Bay ocean waters, general restrictions. (a) Hanalei Bay ocean waters means all ocean waters and navigable streams confined by the boundaries shown on Exhibit "C" dated [September 19, 1988]December 1, 2010, located at the end of this subchapter and incorporated herein, and described as follows:

Beginning at a point on the shoreline at the northernmost tip of Makahoa Point on the western end of the bay, thence along a straight line drawn tangent to the shoreline of Puu Poa Point on the eastern end of the bay, thence clockwise along the shoreline, including the banks of all navigable streams to the upper limit of tidal influence, to the point of beginning.

(b) [The Hanalei Bay ocean waters are subject to the following restrictions] In addition to all federal, state, and county laws, rules, and ordinances, the following restrictions shall apply to all activities in Hanalei Bay ocean waters.

- (1) No person shall operate a vessel at a speed in excess of "slow-no-wake" [(five miles per hour)] within five hundred feet of the shoreline, an ingress/egress zone, designated mooring area, or on the Hanalei

River [or within the designated mooring area].

- (2) No person shall navigate a motorboat within three hundred feet of a [shoreline,] diver's flag[,] or a designated swimming area.
[No person shall navigate a commercial motorboat within five-hundred feet of the shoreline, except within the designated ingress/egress corridors.] Vessels thirty feet or less overall engaged in fishing are exempt from the three-hundred foot shoreline restriction, except that they may not enter designated swimming areas.
- (3) No person shall anchor or moor a vessel, raft, barge, platform or other contrivance except within the designated mooring area.
- (4) No [commercial] fishing vessel [over fifty] longer than thirty feet [in length] overall may engage in fishing except by pole and line within Hanalei Bay ocean waters.
- (5) No commercial vessel shall load or unload passengers in Hanalei Bay ocean waters or the lands adjacent thereto without a permit issued by the department and approval by the County of Kauai. All vessels authorized to load and unload passengers in Hanalei Bay ocean waters or the lands adjacent thereto shall travel to and from the beach only through a designated ingress/egress zone.
- (6) The department may issue up to five (5) commercial use permits for the use of self-propelled vessels to load and unload passengers at Hanalei Bay. Priority for the initial issuance of permits under this 2011 amendment shall be given to the persons that held a commercial use permit and operated under said permit in November 2000 for Hanalei Bay ocean waters. Through attrition of these initial five permittees, the

maximum number of permits issued shall be reduced to three (3) permits. Permits shall be limited to passenger vessels certified by the Coast Guard to carry twenty-five or fewer passengers, and each permit shall authorize the carrying of no more than thirty passengers daily.

- (7) The department may issue up to two (2) commercial use permits for the Hanalei launch ramp for the purpose of conducting guided kayak tours in Hanalei Bay ocean waters. The maximum number of passenger kayaks per trip per permit shall not exceed (8), and no more than thirty passengers shall be allowed per day under each permit. A guide kayak shall be required for each group of eight passenger kayaks. Priority for the initial issuance of permits under this 2011 amendment shall be given to the operators that held a commercial use permit in November 2000 for Hanalei Bay ocean waters to conduct kayak tours.
- (8) No commercial water sports instruction or tours may be conducted in the Hanalei Bay ocean waters from the adjacent beaches without a permit from the department and approval by the County of Kauai. The department may issue a total of up to eight(8) permits for commercial water sports instruction within the Hanalei Bay ocean waters, including surfing and stand-up paddle boarding. Each permit shall authorize one instructor per day to conduct water sports instruction. The instructor shall have no more than four students at any given time. The instructor shall have a minimum of three (3) years surfing experience and possess a current Red Cross advanced life saving certificate. The department may designate the site of instruction at Hanalei Bay and hours of operation for each permittee, and may change the site whenever

such changes is found by the department to be necessary. For the purpose of this section, commercial water sports instruction or tours include, but are not limited to, commercial kayak tours, canoe rides, diving, snorkeling, parasailing, surfing, sailboarding and other water-related recreational activities.

[(c) Recreational Zone A, Hanalei Bay ocean waters.

- (1) Recreational Zone A mean the ocean waters confined by the boundaries shown on Exhibit "C" dated September 19, 1988, located at the end of this subchapter and described as follows:

All ocean waters and navigable streams located mauka of a straight line drawn from the end of Hanalei Pier to Makahoa Point.

- (2) Restrictions. Zone A Hanalei Bay ocean waters is designated for recreation use. No commercial vessel, sailboard, surfboard or other commercial water recreational device may be navigated within Zone A, provided that commercial vessels may be moored within that portion of the designated mooring area located within Zone A.]

[(d)](c) Swimming Zones B-1 and B-2, Hanalei Bay ocean waters.

- (1) Zones B-1 and B-2 mean the areas confined by the boundaries shown and described in Exhibit "C" dated [September 19, 1988] December 1, 2010, located at the end of this subchapter and incorporated herein, as follows:

[Zone B-1 shall be established only when a sand beach of a minimum width of two feet at high tide is present fronting Black Pot Beach Park.]

Zone B-1 swimming area extends three hundred feet seaward of the low water mark for a distance of three hundred feet on each side of Hanalei Pier.

Zone B-2 swimming area extends three hundred feet seaward of the low water mark between the extended boundary lines of the county park containing the beach pavilion.

- (2) Restriction. Zones B-1 and B-2 are designated for bathing and swimming. No person shall operate or moor a vessel, sailboard, or any other recreation device within Zones B-1 and B-2, provided that this restriction shall not apply to:

- (A) [Non-motorized vessels] Vessels engaged in small-scale surround net fishing without the use of motors or fishing and crabbing from shore;

- (B) Hawaiian design outrigger canoes.

[(e)](d) The designated mooring area for the mooring or anchoring of [transient and locally based vessels] vessels, rafts, barges, platforms and other watercraft, is the area encompassed by the boundaries shown on Exhibit "C" dated [September 19, 1988] December 1, 2010, located at the end of this subchapter and incorporated herein, and which are described as follows:

Beginning at a point on the northwest corner of Hanalei Pier by azimuths clockwise from True South, 123 degrees for a distance of six hundred seventy-five feet; 346 degrees for a distance of one thousand two hundred seventy-seven feet; 022 degrees for a distance of seven hundred fifty-six feet; 127 degrees for a distance of three thousand two hundred twenty-five feet; then on a straight line to the point of beginning.

- [(2)] (1) All vessels, rafts, barges, platforms, and other watercraft within Hanalei Bay ocean waters shall be moored or anchored solely within the designated mooring area.
- [(3)] No person shall navigate, moor, or anchor a commercial vessel, providing services on a fee basis, in a designated mooring area unless the vessel has been registered and the owner has a valid commercial use permit issued by the department.]
- [(4)] (2) No person shall anchor, moor or stay aboard a vessel except those equipped with an approved marine sanitation device (MSD) in good working condition, or those vessels exempt from MSD requirement in accordance with U.S. Coast Guard regulations.
- [(5)] (3) No permanent mooring shall be installed within the designated mooring area except by permit issued by the department.
- [(f)] (e) Ingress/Egress zones.
- (1) [Ingress/Egress zones shall be established at intervals along the shoreline to provide beach access for all motorized vessels and non-motorized dinghies and tenders from transient and visiting vessels anchored or moored within the designated mooring area] Vessels shall access the beach and shall be accessed from the beach solely through the following Ingress/Egress zones. Zone number one begins at the southern boundary of the County Park pavilion parcel and extends southwest along the shoreline a distance of

three hundred feet, then seaward to the designated mooring area.

Zone number two begins at the north bank of Hanalei River and extends southward across the Hanalei River mouth to the northern boundary of Black Pot Park, and then extends seaward to the designated mooring area.

[(2) Zone number one is designated for use by recreational motorized vessels, sailing catamarans and dinghies used as tenders for transient recreational vessels.]

[(3)] (2) Zone number one and Zone number two [is] are designated for use by both commercial and recreational vessels."

[Eff 2/24/94; am] (Auth:

HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

11. Section 13-256-71, Hawaii administrative Rules, is amended by adding new definitions and amending the definition of "Windward Oahu Ocean Recreation Management Area" to read as follows:

"Commercial ocean use activities" means commercial operation of thrill craft, high speed boating, parasailing, water sledding, sailing and snorkeling tours, glassbottom boat tours, or any other similar commercial ocean recreation activity.

"Family Member" means any person and his or her spouse as well as their legal children.

[The] "Windward Oahu Ocean Recreation Management Area" means all ocean waters and navigable streams from northwest boundary of Kahana Bay to Makapuu Point, Oahu, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "T", dated August 15, 1988, located at the end of this subchapter." [Eff 2/24/94; am]

(Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-39)

12. Section 13-256-72, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-72 Kualoa [Ocean Waters Restricted Zones.]water restricted zones. (a) Zone A Kualoa [Ocean Waters] waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "U", "Kualoa, Oahu, Hawaii," [Date June 30, 1988] dated September 8, 1998, incorporated herein, and located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point [on the low water mark of the shoreline which is four hundred seventy-five feet south of the groin across from the sugar mill, then by azimuth measured clockwise from True South, 270 degrees for a distance of eight hundred ten feet; 360 degrees for a distance of five hundred twenty-five feet; 090 degrees to a point on the low water mark of the shoreline; then along the low water mark] at approximately 21° 31' 16.6" N/ 157° 50' 06.9" W, then going in an easterly direction to approximately 21° 31' 16.6" N/ 157° 49' 58.2" W, then going in an southerly direction to approximately 21° 31' 11.5" N/ 157° 49' 58.2" W, then going in a westerly direction to approximately 21° 31' 11.5" N/ 157° 50' 07.3" W, then to the point of beginning.

Zone A is designated as a commercial thrill craft zone for the Kualoa full service permit. [No] Not more than six rental thrill craft and one thrill craft used for safety and rescue purposes shall operate at any one time. No person shall operate or moor a vessel or sailboard in [this zone] Zone A when [in use] being used by commercial thrill craft. Commercial thrill craft shall be operated within Zone A only between the hours of [41]9:00 a.m. and 5:00 p.m., Mondays through [Fridays] Saturdays. No commercial thrill craft shall be operated within Zone

A on [Saturdays,] Sundays [, and state] or federal holidays.

(b) Zone B Kualoa [Ocean Waters] waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "U", "Kualoa, Oahu, Hawaii," dated [June 30, 1988] September 8, 1998, incorporated herein, and located at the end of the subchapter. The boundaries of Zone B are as follows:

Beginning at a point [on the low water mark of the shoreline which is two hundred feet north of the boundary of Kualoa Regional Park; then along low water mark of the shoreline in a northerly direction to a point marking to southwest point of Zone A; then by azimuth measured clockwise from True South, 270 degrees for a distance of eight hundred feet; 180 degrees for a distance of five hundred twenty-five feet; 270 degrees for a distance of three hundred sixty feet; 360 degrees for a distance of one thousand thirty-five feet;] at approximately 21° 31' 16.6" N/ 157° 49' 58.2" W, then in an easterly direction to approximately 21° 31' 16.6" N/ 157° 49' 56.0" W, then in an southerly direction to approximately 21° 31' 06.4" N/ 157° 49' 56.5" W, then in a westerly direction to approximately 21° 31' 06.4" N/ 157° 50' 07.5" W, then in a northerly direction to approximately 21° 31' 11.5" N/ 157° 50' 07.7" W, then in an easterly direction to approximately 21° 31' 11.5" N/ 157° 49' 58.2" W, then in a northerly direction [then] by straight line to the point of beginning. Zone B is designated as a non-exclusive commercial ocean water sports zone [for sailing, windsurfing and scuba diving]. High speed towing, water skiing, and water sledding shall be prohibited. [Vessels] All vessels transiting [this zone] Zone B shall proceed with extreme caution.

(c) All commercial ocean [recreation] use activities are prohibited within Kualoa [ocean] waters restricted zones [() A ()] and [() B ()] on Sundays [, effective January 1, 1991] and federal holidays." [Eff

2/24/94; am] (Auth: HRS §§200-2, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

13. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-72.1 to read as follows:

"§13-256-72.1 Kualoa waters restricted zones permit. (a) Not more than one Kualoa full service permit shall be issued for Kualoa waters restricted zones subject to the following conditions:

- (1) The number of thrill craft shall be in accordance with the limits authorized in section 13-256-72(a). The number and type of other vessels and equipment shall not exceed the number and type of vessel and equipment permitted by the department on the effective date of these rules;
- (2) All thrill craft and other operational vessels and equipment shall be registered in accordance with section 13-256-4 (a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal;
- (3) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit a vessel substitution with a similar length vessel; provided that the increase is not greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited;
- (4) The maximum number of customers per day may be established through the conservation district use permit application process, but

shall not exceed one- hundred and fifty customers;

(5) Water sledding, water skiing, and high speed towing shall be prohibited;

(6) The permittee shall maintain a daily log of the number of customers serviced by thrill craft and shall present the logs to division of boating and ocean recreation for review and inspection upon request; and

(7) Educational and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(b) All associated commercial operational and supporting activities shall be conducted from land in accordance with all applicable land use laws and zoning ordinances.

(c) Any vessel with an authorized carrying capacity of more than six passengers with installed toilet facilities shall be equipped with a United States Coast Guard approved marine sanitation device.

(d) Any transfer by the permittee or any transfer or combination of transfers of a majority interest or greater by the owners or shareholders of record of a business entity holding a permit shall automatically void the use of thrill craft and the permit shall revert to a large snorkel tour permit as found in section 13-256-73.5, unless the transfer is to a family member.

(e) Any transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a large snorkel tour.

(f) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of commercial operation." [Eff

] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

14. Section 13-256-73, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-73 Kaneohe Bay [Waters] ocean waters.

(a) Kaneohe Bay ocean waters means the area encompassed by the boundaries shown on Exhibit "V", "Kaneohe Bay, Oahu, Hawaii," dated [May 15, 1990,] April 16, 2001, incorporated herein, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the northern point on the shoreline of Mokapu Point, located at approximately 21° 27' 33.6" N/ 157° 43' 21.6" W, then [by azimuth measured clockwise from True South, 127 degrees for a distance of fifty thousand nine hundred and twenty-five feet] in a straight line to Makahonu Point, located at approximately 21° 32' 33.6" N/ 157° 50' 34.2" W, then along the shoreline of Kaneohe Bay to the point of beginning.

[(b) Commercial ocean recreation activities shall be restricted within Kaneohe bay waters as follows:

(1) No commercial operator, holding a valid ocean recreational management area commercial use permit, shall operate a thrill craft, engage in water sledding or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding during weekends and state or federal holidays.

(2)]

(b) All commercial ocean [recreation] use activities in Kaneohe Bay ocean waters are prohibited on [Sunday, effective January 1, 1991] Sundays and federal holidays.

(c) There shall be no walking, sitting, standing, or anchoring on live coral or otherwise damaging the reef within Kaneohe Bay ocean waters.

[(c)](d) Zone A Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit ["W"] "X", "Kaneohe, Oahu, Hawaii," dated [October 24, 1990,] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone A are [described] as follows:

[Beginning at a point in the water by azimuth measured clockwise from True South, 234.5 degrees for a distance of three thousand nine hundred feet from the Sampan Channel front navigational range light; then on a radius of two hundred feet around that point.] Zone A is a circle with a radius of two hundred feet with its center at approximately 21° 26' 27.5" N/ 157° 47' 45.5" W.

[(d)](e) Zone B Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit ["W"] "X", "Kaneohe, Oahu, Hawaii," dated [October 24, 1990,] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone B are as follows:

[Beginning at a point in the water, by azimuth measured clockwise from True South, 200 degrees for a distance of five thousand two hundred eighty feet from a point on the low water mark on the northern tip of Kealahi Point; then on a radius of two hundred feet around that point.] Zone B is circle with a radius of two hundred feet with its center at approximately 21° 27' 28.5" N/ 157° 48' 08.5" W.

[(e)](f) Zone C restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit ["W"] "X", "Kaneohe, Oahu, Hawaii," dated [October 24, 1990] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone C are as follows:

[Beginning at a point in the water, by azimuth measured clockwise from True South, 194 degrees for a distance of five thousand four hundred ninety feet from a point on the low water mark on

the northern tip of Kealohi Point; then on a radius of two hundred feet around that point.] Zone C is a circle with a radius of two hundred feet with its center at approximately 21° 27' 32" N/ 157° 48' 13.5" W.

[(f) Zone D Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on exhibit "W", dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone D are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, 187 degrees for a distance of five thousand seven hundred thirty feet from a point on the low water mark on the northern tip of Kealohi Point; then on a radius of two hundred feet around that point.]

(g) Zones A, B, and C are subject to the following:

- (1) Zones A, B, and C [, and D] are designated as commercial thrill craft zones where full service permittees shall be required to operate. [No] Not more than six rental thrill craft shall operate within each [zone] of the zones A and B at any one time. No more than three rental thrill craft shall operate within zone C at any one time. [No person shall operate or moor a vessel or sailboard in these zones.] Zone A may be referred to as the Checker Reef commercial thrill craft zone. Zones B and C may be referred to as the commercial thrill craft sand flat zones.
- (2) Commercial thrill craft shall be operated in a clockwise direction only within zones A, B, and C [, and D] only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through [Fridays] Saturdays. No commercial thrill craft shall be operated within Zones A, B, or C [, and D] on [Saturdays,] Sundays[, and state] or federal holidays.

[(g) Zone E Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown

on Exhibit "V-1", dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone E are as follows:

Beginning at a point in the water which is located by azimuth measured clockwise from True south, 219 degrees for a distance of three thousand four hundred eighty feet from the low water mark on the northern tip of Wailau Point "Kahaluu Landing"; then 300 degrees for a distance of five thousand two hundred eighty feet; 026 degrees for a distance of eight hundred forty feet; 032 degrees for a distance of five hundred forty feet; 120 degrees for a distance of one thousand six hundred twenty feet; then by a straight line to the point of beginning.:]

(h) Zone D Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "W", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone D are as follows:

Zone D is rectangular in shape which borders the Kaneohe Bay entrance channel day beacon 11 beginning at a point in the water which is located at approximately 21° 28' 32" N / 157° 49' 39"W, then by a straight line in a due East (true) direction to approximately 21° 28' 32" N / 157° 49' 32" W, then in a straight line to approximately 21° 28' 10.5" N / 157° 49' 27" W, then in a straight line due West (true) to approximately 21° 28' 10.5" N / 157° 49' 34"W, then in a straight line back to beginning.

[(h)] Zone [E] D is restricted to commercial SCUBA, snorkeling and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Activity shall take place only near the reef, not on the reef. Vessels

entering this zone shall use extreme caution while this zone is occupied during diving activities.

[(i) Zone F Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "W", October 24, 1990, and located at the end of this subchapter.

The boundaries of Zone F are as follows:

Beginning at a point in the water which is located by azimuth measured clockwise from True South, 182 degrees for a distance of four thousand two hundred sixty feet from the North tip of the pier at Heeia Kea Small Boat Harbor; then 120 degrees for a distance of one thousand nine hundred fifty feet; 212 degrees for a distance of five hundred forty feet; 206 degrees for a distance of eight hundred forty feet; 314 degrees for a distance of one thousand two hundred feet; then by a straight line to the point of beginning.]

(i) Zone E Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone E are as follows:

Zone E is a circle with a radius of three hundred ten yards with its center located at approximately 21° 27' 25" N / 157° 47' 46.5" W. Zone E is restricted to SCUBA, snorkeling, underwater activities, and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.

(j) Zone [G] F Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on exhibit ["W"] "X", "Kaneohe, Oahu, Hawaii," dated

[October 24, 1990,] September 25, 2000, [and] located at the end of this subchapter and incorporated herein.
The boundaries of Zone [G] F are as follows:

Beginning at a point in the water which is located [by azimuth measured clockwise from True South, 213 degrees for a distance of three thousand eight hundred ten feet from the north tip of the pier at Heeia Kea Small Boat Harbor; then 120 degrees for a distance of one thousand six hundred eighty feet; 211 degrees for a distance of seven hundred twenty feet; 301 degrees for a distance of one thousand six hundred sixty-five feet;] at approximately 21° 26' 50" N / 157° 47' 45" W, then by a straight line to approximately 21° 26' 23.5" N / 157° 47' 25" W, then by a straight line to approximately 21° 26' 16" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 20.5" N / 157° 47' 59.3" W, then by a straight line to approximately 21° 26' 28.5" N / 157° 48' 09" W, then [by] in a straight line to the point of beginning.

Zone F is designated as non-exclusive commercial ocean water sports zone. All vessels entering this zone shall exercise extreme caution while it is being utilized for commercial ocean water sports activities. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. All activity on top of Checker Reef in Zone F is prohibited.

(k) Zone G Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone G are as follows:

Beginning at a point in the water which is located at approximately 21° 26' 25" N / 157° 47' 49" W, then by a straight line to approximately 21° 26' 22" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 16.5" N / 157° 47' 36" W,

then by a straight line to approximately 21° 26' 19" N / 157° 47' 51" W, then by a straight line to the point of beginning. Zone G is designated as non-exclusive commercial water ski and water sledding zone.

Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes shall be restricted to this zone. No more than one commercial vessel for water sledding shall be permitted to tow at any speed within this zone at any one time for safety purposes. Commercial large full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor or anchor a vessel within this zone. High speed operations shall take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

[(k) Zones F and G are designated as commercial and recreational water ski and water sledding zones. All water skiing and water sledding and the operation of towed devices used to carry passengers for both commercial and recreational purposes west of the Sampan Channel is restricted to these zones. No more than four commercial operating area use permits for water sledding shall be permitted in Zone F or G for safety purposes. No Person shall moor a vessel within these zones.

(l) Zone H restricted zone is the area encompassed by the boundaries show on Exhibit "V-1", dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone H are as follows:

Beginning at a point in the water which is located by azimuth measure clockwise from True South, 219 degrees for a distance of three thousand four hundred eighty feet from the low water mark on the tip of Wailau Point "Kahaluu Landing"; Then 168 degrees for a distance of three thousand five hundred seventy feet; 270 degrees for a distance of one thousand three hundred twenty feet; 311 degrees for a distance of nine thousand feet; 039 degrees

for a distance of one thousand two hundred seventy-five feet; 012 degrees for a distance of one thousand fifty feet; 031 degrees for a distance of seven hundred twenty feet; 120 degrees for a distance of five hundred ten feet; 173 degrees for a distance of one thousand three hundred sixty-five feet; 134 degrees for a distance of one thousand two hundred feet; then by a straight line to the point of beginning.

(m) Zone H-1 restricted zone is the area encompassed by the boundaries shown on Exhibit "W", dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone H-1 are as follows:

Beginning at a point in the water which is located by azimuths measure clockwise from True South, 206.5 degrees for a distance of six thousand five hundred ten feet from a point on the low water mark on the northern tip of the Kealahi Point; then 210 degrees for a distance of two thousand seven hundred seventy-five feet; 227 degrees for a distance of two thousand seven hundred seventy-five feet; 039 degrees for a distance of one thousand fifty feet; then in a straight line to the point of beginning.

No person shall operate a vessel within Zones H and H-1 at a speed in excess of slow-no-wake. Recreational thrill craft and water ski and water sledding activities are prohibited. Commercial vessels and activities are prohibited, except for commercial fishing vessels engaged in baiting operations.

(n)] (1) [Kaneohe Bay recreational thrill craft zone is the area seaward of the boundaries of Zones "H", "H1" and "I" shown on Exhibit "X", dated October 24, 1990, and located at the end of the subchapter. The boundaries are as follows:

Beginning at a point in the water immediately south of buoy "3", which marks the southeast boundary of the northern shipping channel in Kaneohe Bay; then in southerly direction along the eastern boundary of the channel to the intersection of the Sampan Channel at buoy "10", except where zoned for other

activity; then in a northeast direction along the northwestern boundary of the Sampan Channel to buoy R-2; then on a straight line to the point of beginning.

The Kaneohe Bay recreational thrill craft zone is designated for recreational thrill craft.] Recreational thrill craft shall not be operated in any [other] area of Kaneohe Bay [.] except in the designated recreational thrill craft zone as described in section 13-256-77. Recreational thrill craft shall access the recreational thrill craft zone by transiting from Heeia Kea small boat harbor directly to the Sampan channel to the Kaneohe recreational thrill craft zone as described in section 13-256-77.

[(o) Zone I restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "W", dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone I are as follows:

Beginning at a point in the water which is located by azimuths measured clockwise from True South, 213 degrees for a distance of three thousand eight hundred then feet from the north tip of the pier at Heeia Kea Small Boat harbor; then 210 degrees for a distance of six hundred seventy-five feet; 121 degrees for a distance of one thousand six hundred sixty-five feet; 192 degrees for a distance of one thousand fifty feet; 219 degrees for a distance of one thousand two hundred seventy-five feet; 311 degrees for a distance of five thousand eight hundred twenty feet; 037 degrees for a distance of one thousand nine hundred fifty feet; then by a straight line to the point of beginning.]

(m) Zone H restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone H are as follows:

Beginning at a point in the water which is located at approximately 21° 27' 32.5" N / 157° 48' 19.5" W, then by a straight line to

approximately 21° 27' 26.5" N / 157° 48' 10" W, then by a straight line to approximately 21° 27' 14.5" N / 157° 48' 17" W, then by a straight line to approximately 21° 27' 20" N / 157° 48' 27" W, then in a straight line to the point of beginning. Zone H is designated as non-exclusive commercial water ski and water sledding zone.

Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes are restricted to this zone. No more than two commercial vessels for water sledding shall be permitted to tow at high speed within this zone at any one time for safety purposes. Commercial full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor a vessel within this zone. High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

(n) Zone I restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone I are as follows:

Beginning at a point in the water located at approximately 21° 27' 41" N / 157° 48' 18" W, then by a line parallel to the edge of the sand flat to approximately 21° 27' 32" N / 157° 48' 02" W, then by a straight line to approximately 21° 27' 25" N / 157° 48' 07" W, then by a straight line to approximately 21° 27' 34" N / 157° 48' 22.5" W, then by a straight line to the point of beginning.

Zone I is designated as non-exclusive commercial ocean water sports zone. Other vessels entering this zone shall exercise extreme caution while it is being used for commercial ocean water sports activities. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest. Commercial operators whose passengers do not operate thrill craft

must keep their passengers out of Thrill Craft Zones B and C. Vessels operating in Zone I shall maintain a watch for sea turtles , which may migrate to the north central part of the zone, and exercise care to stay clear of any turtle observed.

[(p) Zone J restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "W", dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone J are as follows:

Beginning at a point in the water which is located by azimuths measured clockwise from True south, 235 degrees for a distance of two thousand five hundred eighty feet from the front Sampan Channel navigational range light; then 114 degrees for a distance of one thousand two hundred thirty feet; 218 degrees for a distance of one thousand eight hundred feet; 287 degrees for a distance of one thousand six hundred ninety-five feet; 006 degrees for a distance of one thousand eighty feet; then by a straight line to the point of beginning.

(q) Zones I and J are designated as ocean water sports zones. Other vessels entering these zones shall exercise extreme caution while they are being utilized for commercial ocean water sports activities. Vessels operating in Zone I shall maintain a watch for sea turtles which may migrate to the north central part of the zone, and exercise care to stay clear of any turtles observed.

(r) Zone J-1 Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "W", dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone J-1 are as follows:

Beginning at a point in the water by azimuths measured clockwise from True South, 206 degrees for a distance of two thousand two hundred fifty feet from Sampan Channel front navigational range light; then 114 degrees for a distance of two hundred twenty-five feet; 180 degrees for a distance of three hundred seventy-

restrictions of subsection (p), but shall operate only in accordance with a permit issued by the department pursuant to chapter 13-231 or chapter 13-256 or both.

(r) Anchoring or mooring on living coral is prohibited.

(s) All sea walker activity shall be done on a flat sandy bottom, not on sea grass beds.

(t) All underwater activity, including but not limited to SCUBA, snorkeling, and sea-walker, shall prohibit participants from touching coral and/or living parts of a reef." [Eff 2/24/94; am]
(Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

15. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256- 73.1 to read as follows:

"§13-256-73.1 Kaneohe Bay ocean waters commercial use permits. (a) No commercial ocean use activity may be conducted within Kaneohe Bay waters except in accordance with a Kaneohe Bay waters commercial use permit issued by the department. For the purpose of this section, "full service permit" means a permit which includes thrill craft, water sledding, and other high speed boating activities in addition to sailing, snorkeling, scuba diving, sail boarding, and other related water recreational activities approved by the department.

(b) The number and types of Kaneohe Bay ocean waters commercial use permits authorized for Kaneohe Bay ocean waters shall be as follows:

- (1) One full service permit as authorized in section 13-256-72.1;
- (2) Two large full service permits as authorized in section 13-256-73.2;
- (3) One small full service permit as authorized in section 13-256-73.3;
- (4) One small full service permit without thrill craft, water sledding, and high speed towing

five feet; 218 degrees for a distance of one thousand four hundred forty feet; 287 degrees for a distance of four hundred fifty feet; then in a straight line to point of beginning.

(s) Zone J-1 is designated as commercial water ski and water sledding zones. All water skiing and water sledding and the operation of towed devices used to carry passengers for both commercial and recreational purposes is restricted to this zone. Only one commercial permitted within this zone for safety purposes. No person shall moor a vessel within this zone.

(t)] (o) Kaneohe Bay [channel] speed restrictions. [Notwithstanding any rule to the contrary, the speed of any watercraft shall not exceed 15 knots when within the confines of the Kaneohe Bay channel as shown on Exhibits "V-1", "W" and "X" dated October 24, 1990, and located at the end of this subchapter. The boundaries are described as follows:

The Kaneohe Channel, beginning at a line across the channel at day beacon G"11", then through each and every buoy and day beacon in ascending order to the intersection at the extended line of the Sampan Channel range marks.]

In addition to speed restrictions found in section 13-244-9, slow-no-wake restrictions shall apply in Kaneohe Bay offshore mooring areas, Kaneohe Bay ocean waters zones D, E, F, and I, Kualoa waters zone B, and anywhere within the Kaneohe Bay when a vessel is within two hundred feet of Kapapa Island and the Central Reef shallows defined as areas having a depth of less than or equal to five feet mean lower low water, including the area of Ahu O Laka Island, ("The Sand Bar").

[(u)] (p) No increase in the level of commercial ocean use activities [as of July 3, 1990] existing on July 1, 1993 will be permitted within Kaneohe Bay waters.

(q) Activities conducted by a bona-fide educational institution or an organization which is registered with the State and classified by the Internal Revenue Service as a not-for-profit (section 501 (c)(3)) organization shall not be subject to the

activities as authorized in section 13-256-73.4;

- (5) Three large snorkel tour operations, including associated underwater activities approved by the department, as authorized in section 13-256-73.5;
- (6) Three small sail or snorkel tour operations, including associated underwater activities approved by the department, as authorized in section 13-256-73.6; and
- (7) One glass bottom boat tour operation as authorized in section 13-256-73.7.

(c) Any transfer of a large full service permit, except for a transfer to a family member as defined in section 13-256-71, shall revert the large full service permit to a large snorkel tour permit with an aggregate maximum carrying capacity of no more than one-hundred fifty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel. Any change from a large full service permit to a large snorkel tour permit shall be on a one for one basis reducing the number of large full service permits by one and authorizing an increase to the number of large snorkel tour permits by one.

(d) Any transfer of a small full service permit, except for a transfer to a family member as defined in section 13-256-71, shall revert the small full service permit to a small sail or snorkel tour permit with an aggregate maximum carry capacity of no more than sixty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel. Any change from a small full service permit to a small sail or snorkel tour permit shall be on a one for one basis reducing the number of small full service permits by one and authorizing an increase to the number of small sail or snorkel tour permits by one.

(e) The Kaneohe Bay ocean waters commercial use permit required under this section shall satisfy the requirement for all other harbor use permits required of commercial operators under chapter 13-231, with the

exception of a mooring permit for each vessel moored in Heeia Kea small boat harbor or offshore.

(f) The Kaneohe Bay waters commercial use permit fee per permit shall be as provided in HRS chapter 200 and rules adopted thereunder.

(g) The report of gross receipts shall be received by the department for each month covered by the commercial use permit no later than the end of the month following the reported month and shall be submitted on a form acceptable to the department. Failure to submit the report of gross receipts as required for a period in excess of sixty days following the due date, may be treated by the department as causing an automatic termination of the Kaneohe Bay waters commercial use permit.

(h) The department may conduct a financial audit of the records of a Kaneohe Bay ocean waters commercial use permit to determine the accuracy of reported gross receipts or to inspect any other financial information directly related to the enforcement of these rules after providing notice, as described in section 13-230-6, no less than thirty days prior to the audit.

(i) Any vessel with an authorized carrying capacity of more than six passengers with installed toilet facilities shall be equipped with a United States Coast Guard approved marine sanitation device.

(j) All permittees shall maintain a daily log of the operations, to include vessel and operator identifying information, number of customers serviced, fuel or sewage spills, sewage pumping out, refueling, incidents on the water and time of departure and arrival at the Heeia Kea small boat harbor pier, or authorized passenger loading and unloading area, or appropriate operating zone. All permittees shall submit the logs to the department each week.

(k) There shall be no passenger loading and unloading at a launch ramp at Heeia Kea small boat harbor.

(l) Large full service permits authorized by section 13-256-73.2, shall be allowed to use no more

than three trailers per permit per day at the Heeia Kea small boat harbor launch ramps for the launching and recovery of vessels. Small service permits authorized by sections 13-256-73.3 and 13-256-73.4, shall be allowed not more than two trailers per permit per day to use the Heeia Kea small boat harbor launch ramps for the launching and recovery of vessels. Each trailer allowed to use a launch ramp shall be properly licensed and shall be issued a ramp use decal by the department which shall be affixed to the forward end of the trailer tongue.

(m) No activity that is new to a permittee may be conducted without prior written authorization from the department.

(n) Permittees shall establish a safety instruction program for customers that includes, but is not limited to, the use of a personal flotation device, and notification of hazardous conditions or areas and restricted areas.

(o) Permittees shall maintain a visual watch over persons in the water.

(p) Permittees shall have no less than one staff member on site within the permittee's Kaneohe Bay operating area who carries a current adult cardio-pulmonary resuscitation (CPR), and standard first aid and lifeguard training certificates. A list of water safety training certificates acceptable to the department shall be provided to the permittee."

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

16. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.2 to read as follows:

"§13-256-73.2 Large full service permit restrictions. (a) Not more than one-hundred fifty customers per day per permit shall be allowed for a large full service permit.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) Two host vessels with an aggregate maximum carrying capacity of one-hundred fifty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel.
- (2) Six rental thrill craft and one thrill craft used for operational safety purposes;
- (3) Two equipment barges, for each of which the passenger carrying capacity shall be six or as established by a United States Coast Guard Certificate of Inspection so long as the capacity is not greater than 20;
- (4) Three motorboats, for each of which the passenger carrying capacity shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and
- (5) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, and small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of each host vessel and service barge having a carrying capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The permittee shall indicate which host vessel is declared to be the primary vessel used to embark and disembark passengers from the pier. This vessel shall be allowed to load to full permit capacity of one-hundred fifty. Should the certified passenger capacity of the primary vessel be less than one-hundred fifty, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The three small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) Host vessels shall be equipped with a United States Coast Guard approved marine sanitation device.

(g) All thrill craft and other vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and must display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) In the event there is a sale or transfer of a majority of ownership interest in the business to a person not an owner or a shareholder of record after the effective date of this section, the number of host vessels allowed per permit shall be reduced to one host vessel, unless the sale or transfer is to a family member.

(j) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(k) Any transfer or combination of transfers by the owners or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically void the use of thrill craft, high speed towing/water sledding, and water skiing activities and the permit shall revert to a large snorkel tour permit as found in section 13-256-73.5 unless the transfer is to a family member. A transfer

shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a large snorkel tour.

(l) High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

(m) For the Checker Reef area, host vessel(s) must be moored with bow and stern anchoring as approved by the department, thirty feet or more off of the reef on the south and west edge of Checker Reef, with no obstruction of the use of the channel passing to the southwest of the reef.

(n) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of operation." [Eff]

(Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

17. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.3 to read as follows:

§13-256-73.3 Small full service permit restrictions. (a) Not more than seventy customers per day per permit shall be permitted for a small full service permit.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) One host vessel with a maximum passenger carrying capacity of seventy passengers;
- (2) Three rental thrill craft and one thrill craft used for operational safety purposes;
- (3) Two equipment barges, the passenger carrying capacity of each shall be six or as established by a United States Coast Guard

Certificate of Inspection so long as the capacity is not greater than 20;

- (4) Two small motor boats, the passenger carrying capacity of each shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and
- (5) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of the host vessel and service barges having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The host vessel shall be allowed to load passengers to the full permit capacity of seventy. Should the certified passenger capacity of the vessel be less than seventy, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The two small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) A United States Coast Guard approved marine sanitation device or portable toilet shall be located on either the host vessels or one of the equipment barges.

(g) All thrill craft and other vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have the discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of seventy customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(j) Any transfer or combination of transfers by the owner or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically void the use of thrill craft, high speed towing/water sledding, and water skiing activities and the permit shall revert to a small sail/snorkel tour permit as found in section 13- 256-73.6, unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a small sail/snorkel tour.

(k) High speed operations must take place in deep water two hundred feet or more from any reef edge, reef crest, or sand flat.

(l) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of operation." [Eff]
(Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

18. Chapter 13-256, Hawaii Administrative Rules,
is amended by adding a new section 13-256-73.4
to read as follows:

§13-256-73.4 Small full service permit
restrictions without thrill craft, water sledding, and
high speed towing activities.

(a) No more than seventy customers per day per permit shall be permitted for a small full service permit without thrill craft, water sledding, and high speed towing activities.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

(1) One host vessel with a maximum passenger carrying capacity of seventy passengers.

(2) Two equipment barges, the passenger carrying capacity of each shall be six or as established by a United States Coast Guard Certificate of Inspection so long as the capacity is not greater than 20.

(3) Two small motorboats, the passenger carrying capacity of each shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and

(4) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of the host vessel and service barges having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The host vessel shall be allowed to load passengers to the full permit capacity of seventy. Should the certified passenger capacity of vessel be less than seventy, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The two small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) A United States Coast Guard approved marine sanitation device or portable toilet shall be located on either the host vessel or one of the equipment barges.

(g) All vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of seventy customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(j) Any transfer or combination of transfers by the owners or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically cause the permit to revert to a small sail/snorkel tour permit as found in section 13-256-73.6, unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 13-256-7.

(k) Thrill craft, water sledding, waterskiing and high speed towing are not authorized activities under this permit." [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

19. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.5 to read as follows:

"§13-256-73.5 Large snorkel tour permit restrictions. (a) No more than one-hundred fifty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than seventy customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) All associated operational and supporting activities on land must meet all applicable land use laws and zoning ordinances, including, but not limited to the number of passengers allowed and approved for loading from private lands or as approved by the department through a conservation district use permit.

(d) Snorkel tours shall be conducted in Zones "D" and "E" within Kaneohe bay waters, pursuant to section 13-256-73.

(e) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe By waters designated as restricted zone I and shall not exceed two hours. Only non-motorized equipment may be used for water sports recreation.

(f) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea small boat harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(g) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on July 1, 1993 by the department shall not be allowed.

(h) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(i) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(j) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of a business transfer fee in accordance with section 13-256-7.

(k) When the Kualoa full service permit or a large full service permit turns into a large snorkel tour permit because of a transfer of ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(l) When a large snorkel tour permit transfers ownership to a non-family member no more than seventy customers per day shall be permitted."

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

20. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.6 to read as follows:

"§13-256-73.6 Small sail/snorkel tour permit restrictions.

(a) Not more than sixty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than thirty five customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) Snorkel tours shall be conducted in Zones "D" and "E" within Kaneohe Bay waters, pursuant to section 13-256-73.

(d) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe Bay waters designated as restricted zone I and shall not exceed one hour. Only non-motorized equipment may be used for water sports recreation.

(e) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea small boat harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(f) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on July 1, 1993, by the department shall not be allowed.

(g) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(h) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(i) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of business transfer fee in accordance with section 13-256-7.

(j) When a small full service permit turns into a small snorkel tour permit because of a transfer of ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(k) When a small snorkel tour permit transfers ownership to a non-family member no more than thirty-five customers per day shall be permitted." [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

21. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.7 to read as follows:

"§13-256-73.7 Glass bottom boat tour permit restrictions.

(a) The passenger carrying capacity of the vessel shall be established by a United States Coast Guard Certificate of Inspection. If a vessel has no U.S.C.G Certificate of Inspection, the vessel's capacity shall not exceed six passengers.

(b) The maximum number of passengers per outing shall be seventy passengers. Passengers may be loaded and unloaded only at the Heeia Kea small boat harbor pier.

(c) The vessel shall be equipped with a United States Coast Guard approved marine sanitation device.

(d) The vessel shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(e) Educational and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of seventy customers allowed per outing. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(f) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on the effective date of these rules by the department shall not be allowed.

(g) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of business transfer fee in accordance with section 13-256-7.

(h) An exchange of passengers between the glass bottom boat tour permittee and any other permittee shall not be allowed." [Eff]

(Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

22. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.8 to read as follows:

"§13-256-73.8 Replacement vessels size restrictions. (a) Replacement vessels shall not be greater in vessel length overall than 10 % of the vessel overall length authorized on May 22, 2000.

(b) Replacement of any existing vessels or equipment shall require prior written approval by the department." [Eff] (Auth: HRS

§§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

23. Chapter 13-256, Hawaii Administrative Rules,
is amended by adding a new section 13-256-73.9
to read as follows:

"§13-256-73.9 Shuttling restrictions. No shuttling or transferring of customers among the permittees for the purpose of exceeding the maximum daily customer limit specified by type of permit or exceeding the certified passenger capacity of the vessel shuttling or receiving the passengers shall be allowed." [Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

24. Chapter 13-256, Hawaii Administrative Rules,
is amended by adding a new section 13-256- 73.10
to read as follows:

"§13-256-73.10 Permit Issuance. (a) Permittees holding valid commercial use permits on the effective date of this rule shall be offered the opportunity to apply for the permit category in which they are operating upon the expiration of their respective permits. If any permit offer is refused by the permittee, that permit shall not be issued and shall be eliminated from the total number of Kaneohe Bay ocean waters commercial use permits.

(b) Permit applications shall be reviewed for compliance with chapter 200, HRS, applicable rules, and permit conditions. Failure to comply with any permit condition, or having any record of inaccurate submission of gross receipts, inconsistent or untimely payments of fees and charges, or unsafe operations during the last term of a valid permit held by the applicant, may be cause for rejection of the permit application.

(c) The following documents shall be submitted for review at the time an application is made for the issuance of a permit:

- (1) Vessel documentation or registration.
- (2) Vessel certificate of inspection (if applicable).
- (3) Certificate of business liability insurance which insures all activities of permittee, including coverage for the operation of thrill craft or other activities including, but not limited to, canoeing, sailing, windsurfing, water sledding, snorkeling, scuba diving or other underwater activities, if applicable, and naming the State of Hawaii as an additional insured.
- (4) Certificate of good standing from the Department of Commerce and Consumer Affairs.
- (5) Tax clearance certificate from the department of taxation.
- (6) Conservation district use permits (if applicable).
- (7) Affidavit describing any and all accidents, or safety related issues or events, including those affecting employees or customers that have occurred within the past year.
- (8) Affidavit describing any and all warnings, discrepancies, citations, fines, penalties and convictions levied by the United State Coast Guard, department of land and natural resources, Honolulu police department, City and County of Honolulu, department of planning and permitting, or any other regulatory agency.
- (9) Affidavit describing any and all sales or transfers of any ownership interest in the business.

(d) The department shall publish a list of Kaneohe Bay waters commercial use permits scheduled for issuance to incumbent permit holders thirty days prior to the expiration dates of the preceding permits issued in a newspaper of general circulation in the Kaneohe area,

with a copy to the Kaneohe Bay Regional Council, inviting public comment on this list and the incumbent permit holders. Any request that a permit not be issued must be accompanied by factual supporting documentation showing the incumbent permittee's failure to meet permit issuance requirements of this chapter.

(e) Insurance requirements for all commercial vessels and all activities conducted on or in the water of Kaneohe bay shall be not less than \$50, 000 for property damage and not less than \$1,000,000 for liability. The liability insurance shall name the State of Hawaii as an additional insured. Any subcontractor employed by a permittee, such as, but not limited to, a scuba diving instructor, shall have insurance coverage which provides the same coverage as required of the permittee and names the State of Hawaii as a additional insured. The permittee and its subcontractors shall provide to the Department certificate(s) of insurance that cover any and all activities conducted under the permit.

(f) In the event an application for the issuance of a new permit is denied, the applicant will be afforded the opportunity for a hearing in accordance with section 13-231-31 and section 13-231-32 for the sole purpose of allowing the applicant to contest the basis of the denial. The opportunity of a hearing shall not apply to automatic expiration provisions of these rules."

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

25. Chapter 13-256, Hawaii Administrative Rules,
is amended by adding a new section 13-256-73.11 to
read as follows:

"§13-256-73.11 Temporary mooring of vessels authorized for commercial use in Kaneohe Bay at Heeia Kea small boat harbor. Temporary mooring within Heeia Kea small boat harbor for any vessel that is authorized for commercial use in Kaneohe Bay ocean waters shall not exceed a cumulative period of 180 days in the same

calendar year." [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39)

26. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.12 to read as follows:

"§13-256-73.12 Kaneohe Bay ocean waters commercial use permit revocation. Revocation of a Kaneohe Bay waters commercial use permit shall be accomplished in accordance with section 13-231-6."
[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39)

27. Chapter 13-256-77, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-77: Kaneohe [commercial high speed boating] recreational thrill craft zone. (a) The [high speed boating] recreational thrill craft zone is the area encompassed by the boundaries of the zone shown on Exhibit "V", dated [May 15, 1990,] April 16, 2001, [and] located at the end of this subchapter and incorporated herein. The boundaries of Zone K are as follows:

[Beginning at a point in the water at the intersection of the Kaneohe Sampan channel ranges extending seaward with an azimuth measure clockwise from True South of 217 degrees, and the Kaneohe Bay waters boundary, establishing the southeastern boundary of the zone; then in a straight line to a point in the water at the intersection of the Kaneohe ship channel ranges extending seaward with an azimuth measure clockwise from True South of 227 degrees, and the seaward boundary of Kaneohe Bay waters, establishing the northwest boundary of the zone.]

Beginning at a point in the water at approximately 21° 28' 23.5" N / 157° 48' 27" W, that intersects

the Kaneohe Sampan channel range extending seaward with an azimuth measured clockwise from True South of 217 degrees, and a straight line drawn to a point in the water at approximately 21° 30' 42" N / 157° 48' 52" W, that intersects Kaneohe ship channel range extending seaward with an azimuth measured clockwise from True South of 227 degrees, establishing the southwestern boundary of the zone. The northwestern boundary of the zone is the straight line that is an extension seaward of the Kaneohe ship channel range with an azimuth measured clockwise from True South of 227 degrees to the limit of the territorial sea. The southeastern boundary of this zone is the straight line that is an extension seaward of the Kaneohe Sampan channel range with an azimuth measured clockwise from True South of 217 degree to the limit of the territorial sea.

As an aid in locating the southwestern boundary, it exists between the Kaneohe Sampan channel and Kaneohe Ship channel ranges along a straight line which can be seen by sighting a straight line between Pyramid Rock which is located at approximately 21° 27' 42" N / 157° 45' 48" W, and Kaoio Point which is located at approximately 21° 32' 03" N / 157° 50' 16" W.

This zone is designated as a [commercial high speed boating] recreational thrill craft zone. Other vessels shall exercise caution when transiting this area. [No more than four commercial operating area use permits for high speed boating shall be issued for this zone. This zone shall be closed to commercial high speed boating annually, during the whale season, from December 15 to May 15 of the following year.]" [Eff 2/24/94; am]

(Auth: HRS §§200-22, 200-23, 200-24, 200-37, 200-39)

(Imp: HRS §§200-22, 200-23, 200-24, 200-37, 200-39)

28. Material, except source notes, to be repealed is bracketed. New material is underscored.

29. Additions to update source notes to reflect these amendments are not underscored.

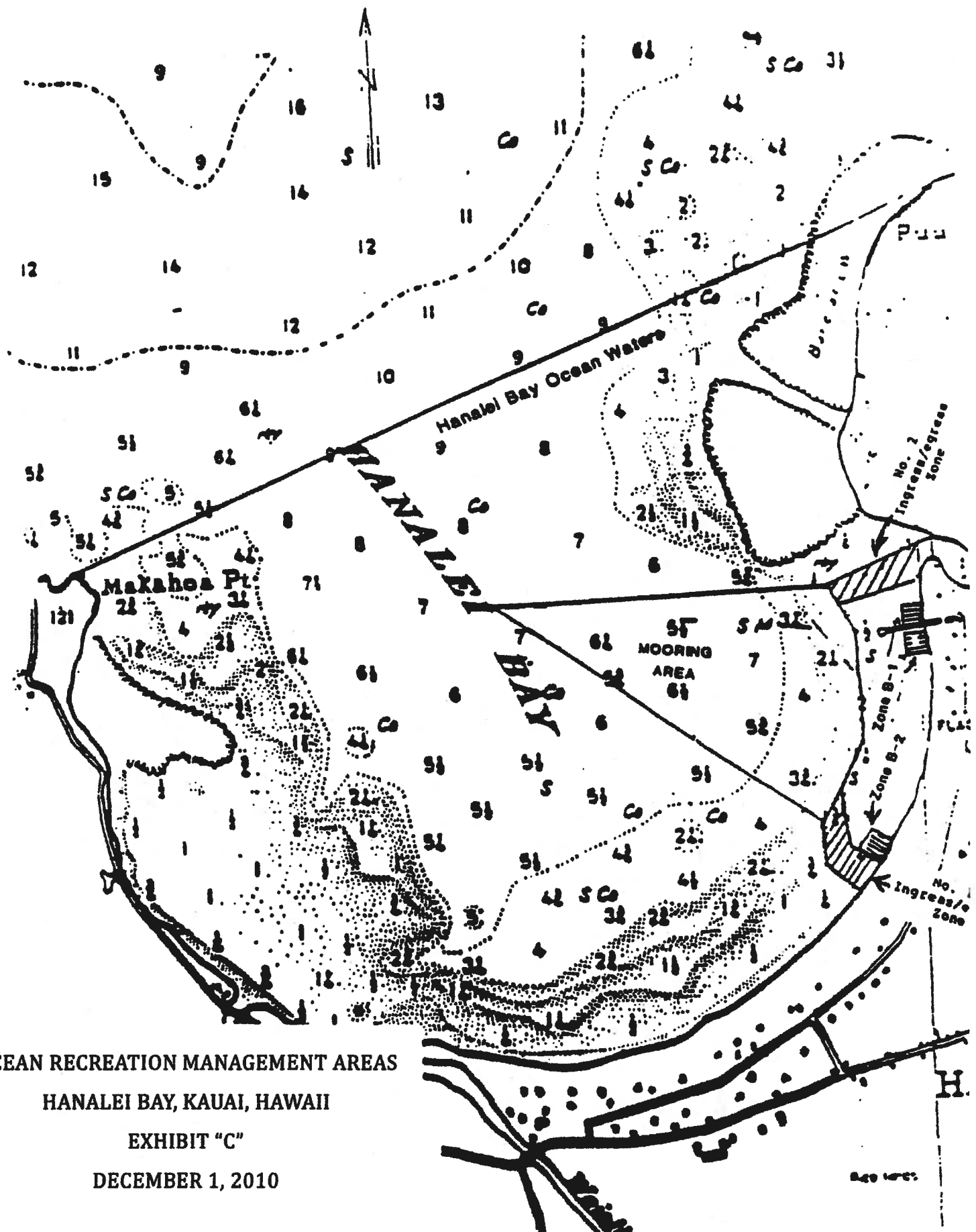
30. These amendments to Title 13, Subtitle 11 Ocean Recreation and Coastal Areas, Parts I, II, and III, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

Laura H. Thielen, Chairperson
Department of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General



OCEAN RECREATION MANAGEMENT AREAS
 HANAIEI BAY, KAUAI, HAWAII
 EXHIBIT "C"
 DECEMBER 1, 2010

